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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS LEEROY HAMMACK,

Defendant and Appellant.

G052760

(Super. Ct. No. R-02869)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

David Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

Dennis Leeroy Hammack appeals the trial court's order revoking his postrelease community supervision (PRCS; Pen. Code, § 3455). His appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, but raised no specific issues, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating he had reviewed the entire record on appeal, and discussed the case with Hammack's trial court attorney and a staff attorney at Appellate Defenders, Inc. Counsel wrote Hammack, explaining his evaluation of the record on appeal and advised Hammack he intended to file a *Wende* brief. Counsel informed Hammack of his right to file a supplemental brief. Counsel supplied Hammack with the transcripts of the record on appeal and a copy of the brief. Counsel did not argue against his client or offer an opinion on the merits of the appeal. He informed Hammack he could ask the court to relieve him as counsel. We gave Hammack 30 days to file a supplemental brief, but he has not responded. We have reviewed the record, found no arguable issues, and therefore affirm the order.

#### FACTS AND PROCEDURAL HISTORY

In August 2015, the Orange County Probation Department filed a petition to revoke Hammack's PRCS. The petition alleged Hammack had been convicted of unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a) in November 2009 and received a prison term. Authorities released him on PRCS in April 2014.

At the revocation hearing on September 22, 2015, Hammack's probation officer Kelly Brazao testified she advised Hammack of the terms of his probation, and he said he understood them. The terms prohibited him from using controlled substances, directed him to maintain a residence approved by his probation officer and report any change in residence, and precluded him from being absent from his residence county for more than 48 hours.

Hammack tested positive for methamphetamine on July 9, 2015. Hammack also told Brazao he was residing in the parking lot of an Anaheim restaurant, but global positioning (GPS) records from Hammack's ankle bracelet reflected he was residing in Cerritos (Los Angeles County) and Moreno Valley (Riverside County) between July 31 and August 20, 2015.

Brazao elaborated that she told Hammack sometime before June 4, 2015, he could temporarily live at a residence in Cerritos until the Los Angeles County probation department approved Hammack's supervision transfer request. But Hammack refused to show up for a follow-up appointment with Los Angeles County officials and they denied his request for transfer. Brazao directed Hammack to relocate to Orange County, and she referred him to the Orange County Health Care Agency for a residential drug treatment or sober living facility. Hammack completed an intake appointment and the facility agreed to accommodate his request for a single room so he would not have to share a room with persons of other races. But Hammack decided he was not going to stay there because the facility wanted him to give up his car keys. Hammack phoned Brazao nightly stating he was staying in his car behind the Anaheim restaurant. After his arrest, he told Brazao there was nothing "that says how long I have to be in Orange County, so sometimes I park there for an hour, sometimes I park there for five minutes, and then I would return to Cerritos."

Hammack testified his truck did not have air conditioning and his sister gave him a ride to Los Angeles for the probation department appointment on June 3, 2015. When they told him to return the following day, he grew angry "because [he] had no way of getting back" and could not "drive in that heat" because of a heart condition. The next day, Los Angeles probation officials told him "if you can't come today you're not coming." Brazao gave him two weeks to move back to Orange County and said she did not "care if you're on the streets or whatever you have got to do." Hammack visited a physician who supplied a note stating he should not be exposed to extreme

temperatures. Brazao still refused to allow him to stay in Cerritos. He stayed at the restaurant parking lot for five days, but the doctor said he could “get a stroke.”

Hammack advised Brazao he was returning to Cerritos and she said she was going to violate him.

The court revoked and reinstated PRCS. The court stated it believed Brazao’s version of events and found Hammack lied to the probation officer and violated PRCS by residing in Cerritos. The court was not persuaded Hammack’s medical condition excused the violation. The court noted Brazao provided Hammack with a residential referral in Orange County and he “could have gotten a home there, probably something with air conditioning.”

The probation officer had recommended, and the court initially ordered, Hammack to serve 120 days until the prosecutor advised the court a 180-day maximum was permissible. The court asked why probation was requesting 120 days, and defense counsel noted the offer was 90 days before the hearing. The court then stated: “One hundred and eighty days it is. One hundred and eighty. Oh, yeah. If I could send him to prison right now, I would do that. Because, I’m telling you, this fellow is stressing our system. And, you know, he’s going to be back. He may not be back here, but he’s going to be back in L.A. He’s going to violate probation in L.A. It’s written on his forehead, ‘I am going to violate probation, community supervision. I’m going to do it.’” The court remarked Hammack would “get air conditioning in jail.” The court characterized Hammack as “a train wreck” who was “stressing our system” and “getting everything [he] can out of it, and that’s really unfortunate.” The court advised Hammack if he failed to report to the probation officer after being released from jail and “you don’t because you’re angry or don’t want to, we will do this again, and we’ll keep doing it, and we’ll keep doing it, and we’ll keep doing it.” The court declined Hammack’s request to transfer supervision to a different probation officer. The court noted “[h]e doesn’t like

her. I don't blame him. If I was sitting in his seat I wouldn't want her either because she has got his number. She's read his book. She has got him figured out."

#### DISCUSSION

Following *Wende* guidelines, we have reviewed counsel's brief and the appellate record and discern no arguable issue. This includes counsel's suggestion we consider whether the trial court's remarks constituted misconduct or reflect the court was biased against him, and whether the court's punishment was unjustified given that Hammack's air-conditioned room in Cerritos was just over the border from Orange County, and the Orange County probation officer had the ability to monitor his movements through the GPS ankle bracelet. Hammack has not availed himself of the opportunity to file a supplemental brief (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding]), nor has he requested to have appellate counsel relieved. We therefore affirm the judgment. (*Wende, supra*, 25 Cal.3d at p. 443.)

#### DISPOSITION

The order is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.